

Thomas P. Bleau, Esq., SBN 152945
 Gennady L. Lebedev, Esq., SBN 179945
 BLEAU / FOX, A P.L.C.
 3575 Cahuenga Boulevard West, Suite 580
 Los Angeles, California 90068
 Telephone : (323) 874-8613
 Facsimile : (323) 874-1234
 e-mail: bleaushark@aol.com
 e-mail: glebedev@bleaufox.com

Attorneys for Plaintiff,
 HOUTAN PETROLEUM, INC.

**UNITED STATES DISTRICT COURT IN AND FOR
 THE NORTHERN DISTRICT OF CALIFORNIA**

HOUTAN PETROLEUM, INC.)	CASE NO. 07-CV-5627 SC
)	
Plaintiff,)	
vs.)	PLAINTIFF, HOUTAN PETROLEUM, INC.'S,
)	OPPOSITION TO CONOCOPHILLIPS
)	COMPANY'S MOTION IN LIMINE NO. 6
CONOCOPHILLIPS COMPANY, a Texas)	
Corporation and DOES 1 through 10,)	RE: EXCLUSION OF EVIDENCE OF LOST
Inclusive)	PROFITS, CONSEQUENTIAL DAMAGES OR
)	OTHER ALLEGED ACTUAL DAMAGES
Defendants.)	
)	
)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff and Counter-Defendant, Houtan Petroleum, Inc. ("Houtan Petroleum"), hereby opposes Motion In Limine No. 6, filed by Defendant and Counter-Plaintiff, ConocoPhillips Company ("ConocoPhillips") as follows:

ConocoPhillips has filed its Motion in Limine No. 6 seeking an order excluding testimony by Houtan Petroleum's expert witness on damages, Russel S. Braasch, E.A.

Plaintiff opposes such Motion on the grounds that the PMPA permits recovery of "actual damages" to a franchisee prevailing in any such action against a franchisor. 15 U.S.C. §2805(d)(1)(A).

ConocoPhillips' instant motion is not based on any contention that Mr. Braasch is not competent or qualified to render any opinion for which he was designated. Rather, it contends that Mr. Braasch should be excluded because Plaintiff is not entitled to recover damages altogether.

1 However, as explained in Plaintiff's opposition to Motion in Limine Number 3, as well as the Trial
 2 Brief and opposition to Motion to Strike Jury, Plaintiff did suffer and is entitled to recover all
 3 damages arising out of ConocoPhillips' failure to comply with the PMPA.

4 Houtan Petroleum intends to prove that as a result of the condensed time frame created by
 5 ConocoPhillips' shortened Notice of Termination, Houtan Petroleum was placed in a position where
 6 it was unable to sell fuel through credit card transactions for a period of five days. Until the Court
 7 granted Plaintiff's application for temporary restraining order and Plaintiff's station was placed back
 8 online by ConocoPhillips, Plaintiff suffered an estimated loss in gross sales of \$75,250.00 and lost
 9 gross profits in the amount of \$25,090.00. But for ConocoPhillips' delay in issuing the Notice of
 10 Termination and making its offer, Plaintiff could have prepared for the October 31, 2007 termination
 11 date sooner and could have avoided the five days of down time. Mr. Braasch's testimony will pertain
 12 to these damage calculations. ConocoPhillips has no reasonable excuse for its failure to comply with
 13 the 90 day notice requirements of the PMPA because, by its own admissions, "the earliest day on
 14 which furnishing such notification [was] reasonably practicable" was clearly much earlier than
 15 September 18, 2007. 15 U.S.C. 2804(b)(1).

16 Thus, the damages being sought are not related to Plaintiff's inability to purchase the
 17 equipment and improvements at a price that approaches fair market value, rather the damages arise
 18 out of ConocoPhillips failure to provide the Notice of Termination and a bona fide offer sooner, as
 19 mandated by the PMPA. Consequently, Plaintiff's ability to continue operating the station is
 20 irrelevant to whether it suffered damages arising out of ConocoPhillips' failure to comply with the
 21 PMPA.

22 Based upon the foregoing, Houtan Petroleum respectfully requests that the Court deny of
 23 ConocoPhillips' motion in limine.

24 Respectfully submitted,

25 Dated: February 4, 2008

BLEAU / FOX, A P.L.C.

//s//

26 By: _____

27 Thomas P. Bleau, Esq.
 Gennady L. Lebedev, Esq.
 Attorneys for Plaintiff
 28 Houtan Petroleum, Inc.